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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 VICTOR RODRIGUEZ-GOMEZ,

15 Defendant.

CASE NO. 95CR1332-LAB

**ORDER DENYING JOINT MOTION
FOR SENTENCING REDUCTION PER
USSG AMENDMENT 782 AND
18 U.S.C. § 3582(c)(2)**

16 **Preliminary Statement**

17 This Court sentenced Rodriguez-Gomez to 48 months custody in 2013 after he pled
18 guilty to a telephone drug count (21 U.S.C. § 843(b)). About a year later, the United States
19 Sentencing Commission adopted Amendment 782 to the United States Sentencing
20 Guidelines ("USSG" or "Guidelines"), which lowered the sentencing range for most federal
21 drug offenses, including the defendant's offense. Another Amendment made the reduced
22 sentencing ranges retroactive. See Amendment 788 (amending Guidelines § 1B1.10).
23 Rodriguez-Gomez is eligible for a shorter sentence because the low end of his reduced
24 sentencing range is 46 months – 2 months less than his original sentence. USSG
25 § 1B1.10(b)(2)(A). He and the Government have filed a joint motion asking the Court to
26 reduce his sentence, and 18 U.S.C. § 3582(c)(2) gives the Court authority to grant it.

27 But eligibility for a sentence reduction is not the same as entitlement to one. Both
28 USSG § 1B1.10(b)(2) and § 3582(c)(2) describe the court's prerogative to reduce a sentence

1 in permissive terms (the court "may" reduce the sentence if the defendant is eligible), and
2 the Supreme Court and the Ninth Circuit have characterized the decision as "discretionary."
3 *See Dillon v. United States*, 560 U.S. 817, 827 (2010) (" . . . § 3582(c)(2) instructs a court to
4 consider any applicable § 3553(a) factors and determine whether, *in its discretion*, the
5 reduction . . . is warranted in whole or in part . . .") (italics added); *United States v. Colson*,
6 573 F.3d 915, 915-16 (9th Cir. 2009) (referring to the district court's *discretionary* denial of
7 the defendant's 18 U.S.C. § 3582(c)(2) motion). The question here is whether reducing the
8 defendant's sentence is equitable and warranted in consideration of the relevant § 3553(a)
9 factors. *United States v. Trujillo*, 713 F.3d 1003, 1009 (9th Cir. 2013). They include: the
10 nature and circumstances of the offense, and the history and characteristics of the
11 defendant; the purposes of sentencing; the kinds of sentences available; the sentences and
12 ranges established by the Sentencing Guidelines; relevant policy statements issued by the
13 Sentencing Commission; the need to avoid unwarranted sentencing disparities among
14 similarly situated defendants; and the need to provide restitution to victims.

15 **§ 3553(a) Analysis**

16 The Court has reviewed Rodriguez-Gomez's probation report, originally filed on
17 April 22, 2014. In summary, it establishes the following: For roughly an eight-month period
18 between December 1994 and July 1995, the defendant supplied methamphetamine to an
19 admitted drug trafficker, Robert Dale Milliner, and to others. During the same eight-month
20 period, Milliner sold methamphetamine to an informant on 14 different occasions. Milliner
21 was eventually arrested, and he told agents that he had been buying methamphetamine from
22 Rodriguez-Gomez in incremental quantities, paying between \$2,000 and \$15,000.

23 Agents arrested Rodriguez-Gomez on August 9, 1995. He told them that he didn't
24 know Milliner, but the agents knew that was a lie because on many occasions they had seen
25 him coming and going from Milliner's house. One time, agents stopped Rodriguez-Gomez
26 driving away from Milliner's. They found \$15,000 in his car and seized it. Milliner admitted
27 later that the money was payment for methamphetamine he had purchased from the
28 defendant.

1 On other occasions before he was arrested, Rodriguez-Gomez negotiated directly with
2 an informant and discussed various drug deals. One was for the defendant to supply the
3 informant with between 15 and 25 pounds of methamphetamine. Another had Rodriguez-
4 Gomez promising to supply 5 pounds of methamphetamine. Despite these negotiations, the
5 defendant maintained post arrest that he was not involved in any form of drug activity.

6 The Government charged Rodriguez-Gomez with drug trafficking, and a judge
7 released him on bond in September 1995. But he jumped bail and fled to Mexico before his
8 scheduled trial date in November 1996. He remained there, on and off, for the next 8 years.
9 Around 2004, he obtained a driver's license in his cousin's name and started venturing back
10 into the U.S. under a false name. In 2008, he was arrested in a Los Angeles motel with a
11 suitcase packed with 20 pounds of methamphetamine. He pled guilty to conspiracy to
12 distribute methamphetamine in L.A. federal court, and was sentenced to 90 months. He was
13 then returned to San Diego to face trial in this case. Not unexpectedly, considering the age
14 of the case, prosecutors offered him a charge bargain: plead guilty to a phone count. He
15 took it.

16 Under § 3553(a)(1), the Court finds that Rodriguez-Gomez's offense was aggravated.
17 Before fleeing to Mexico in 1996, he had engaged in trafficking methamphetamine over a
18 prolonged period of many months. During that period, he negotiated large, multi-kilo sales
19 of the drug and he collected thousands of dollars of drug money. Methamphetamine is a
20 particularly addictive and destructive drug, and Rodriguez-Gomez, as a purveyor of it, bears
21 responsibility for the dismal tide of ill effects that it causes in our community and in our
22 country.

23 The defendant compounded the seriousness of his drug trafficking offense by jumping
24 bail and fleeing to a foreign country. More than a decade elapsed before he was caught and
25 forced to answer for his offenses. Delay can be fatal in criminal cases, and it appears to have
26 had a harmful effect here. Prosecutors offered a charge bargain that dramatically decreased
27 Rodriguez-Gomez's sentencing exposure for his 1995 criminal conduct, despite the fact that
28 he had committed another serious drug trafficking offense while he was on the lamb.

1 Hamstrung by the charge bargain, the Court could impose no more than the statutory
 2 maximum of 48 months. Then and now, that sentence inadequately reflected the seriousness
 3 and circumstances of the defendant's offense. Similarly, the Court's original sentence tended
 4 only minimally to serve the objective of providing just punishment, considering Rodriguez-
 5 Gomez's serial drug trafficking and his 12-year flight to avoid prosecution. USSG
 6 § 3553(a)(2)(A). For both of these reasons, the suggestion that Rodriguez-Gomez's sentence
 7 should now be shortened has no traction with the Court. The Court's decision to run the
 8 sentence in this case consecutively to the 90-month sentence imposed in the L.A. case did
 9 serve the objective of specifically deterring the defendant from involvement in future criminal
 10 activity – at least for an additional 48 months. USSG § 3553(a)(2)(B). Summing up then,
 11 considering the type and amount of drug involved; Rodriguez-Gomez's obstruction of justice;
 12 and his subsequent recidivism, his original 48-month sentence was not disparate, except
 13 perhaps in way that benefitted him. USSG § 3553(a)(6).

14 The Court has also considered the kinds of sentences available, the revised
 15 sentencing range authorized by Amendment 782, and the Policy Statements of the
 16 Sentencing Commission. When Rodriguez-Gomez was sentenced in 2013, his sentencing
 17 exposure was substantially less than it would have been had he pled guilty or been convicted
 18 of the original drug trafficking charges in 1996.¹ In effect, he gained advantages by willfully
 19 obstructing and delaying justice. While the Court is prohibited from revisiting the defendant's
 20 original sentence,² it finds that sentence was reasonable under all of the circumstances, and
 21 that it remains so. The Court declines to reduce Rodriguez-Gomez's sentence – even by the

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25 ¹ Recall that the Sentencing Guidelines were mandatory in 1996.

26 ² The Court acknowledges that it is not permitted to engage in a de novo resentencing in a
 27 § 3582(c)(2) proceeding, USSG. § 1B1.10(a)(3), p.s. ("[P]roceedings under § 3582(c)(2) and this
 28 policy statement do not constitute a full resentencing of the defendant."), and is not doing so here.
 Instead, the Court is merely reevaluating relevant § 3553(a) factors, including the lower Guideline
 sentencing range, to determine if any reduction of sentence is warranted.

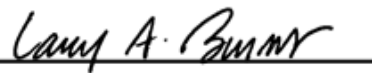
1 measly two months he requests – because to do so would be antithetical to the other
2 important objectives of sentencing mentioned above.

3 **Conclusion**

4 For the above reasons, the Joint Application for Sentencing Reduction pursuant to
5 Amendment 782 and 18 U.S.C. § 3582(c)(2) is **DENIED**.

6 **IT IS SO ORDERED.**

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8 DATED: August 13, 2015

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10 **HONORABLE LARRY ALAN BURNS**
11 United States District Judge
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